which, but for his own . . . conduct, the law would have refused."

If the appellant in this case has not paid the so-called arrears of rent the respondents have only themselves to blame for not accepting such rent when it was regularly and consistently offered to them.

There remains one further matter for consideration. The learned trial Judge gave judgment in accordance with the respondents' claim for mesne profits from the 30th day of November, 1954, at the rate of $137.50 per month, being double the rental value of the said premises. Mr. Das, in the course of his able and lucid argument in this case, submitted — and Mr. Pooley conceded the validity of the argument — that the Court had no jurisdiction to order double rent. The claim for mesne profits on the basis of double rent was admittedly made in reliance on the provisions of section 13(4) of the Civil Law Ordinance (Laws of the Straits Settlements, Vol. II, Cap. 42), which enables a landlord to claim double rent in the case of a tenant holding over after the determination of his tenancy up to the time he surrenders possession thereof. Section 17, however, of the Control of Rent Ordinance, 1948, as amended, expressly enacts that section 13(4) of the Civil Law Ordinance shall not apply to a tenant of premises to which the Control of Rent Ordinance applies "unless and until an order of ejectment against such tenant has been made". An order of ejectment means, of course, an order made by the Court. It is apparent that this provision of the Control of Rent Ordinance was overlooked and the learned trial Judge had no power, at the time of giving judgment, to order payment of double rent. The amount involved by the judgment and consequential order for payment of double rent amounts to $1,203.12.

For these reasons I would allow the appeal and set aside the judgment of the lower Court for recovery of possession of the premises. The respondents are entitled to such rent at the rate of $68.75 per month as may be due to them from the 30th day of November, 1954 up to the date of delivery of this judgment. The appellant is entitled to recover the sum of $1,203.12 already paid by him by way of double rent. The appellant is entitled to his taxed costs, both here and in the lower Court.

Appeal allowed.

Solicitors: *Oh Cheow Hong; Presgrave & Matthews.*

HAJI SAUD v. HAJI AHMAD & ANOR.

[C. A. (Mathew C.J. (F.M.), Whyatt C.J. (S), and Rigby J.) October 18, 1956]

[Penang — F.M. Civil Appeal No. 53 of 1955]

Administration of Estates Enactment (Kedah No. 1), s. 45 — Sale of immovable property by administrator — Permission of the Court — Whether administrator can enter into agreement for sale.

This was an appeal against an order for the specific performance of agreement for sale of immovable property. The appellant who was the administrator of the estates of two deceased persons made an agreement for sale of the land the subject of the appeal with the respondents. The respondents were put in possession of the land but the administrator took no steps to register the respondents as owners of the land. It was argued on appeal that, as section 45 of the Kedah Administration of Estates Enactment provided that an administrator shall not transfer by sale any immovable property vested in him without the permission of the Court, there was no agreement to sell the land but only an agreement to seek the permission of the Court to sell the land after such permission had been granted.

Held: (1) an administrator can enter into an agreement for the sale of immovable property but the agreement is unenforceable unless the permission of the Court is obtained;

(2) the High Court is empowered in cases of this kind to give the permission required under section 45 of the Enactment, and if such permission is not given, the Court of Appeal is empowered to do so.

Cases referred to:—

(1) *Gan Hong Hoe v. Aziz Beg* (1954) M.L.J. 202.

(2) *Salmiah v. Lim Soo Kok* F.M. Civil Appeal No. 32 of 1955 — unreported.

(3) *Haji Osman v. Sayid Noor* (1952) M.L.J. 37.

CIVIL APPEAL.

M. Knorpel for the appellant.

Lee Theam-Chu for the respondents.

Mathew C.J. (with whom **Whyatt C.J. (S.)** and **Rigby J.** concurred): — The appellant is the administrator of the estates of Haji Mohamed Ali (deceased) and Zahara binti Taha (deceased). In 1942 in the presence of the beneficiaries the appellant as administrator made an agreement for sale of the land the subject of this appeal. Two thousand dollars was paid as purchase price and distributed amongst the beneficiaries. The title deed to the land was handed to the first respondent, and the two respondents were put in possession of the land and are still in possession. The administrator took no steps to register the respondents as owners of the land and in consequence these proceedings were started.

The appellant was unrepresented in the High Court, and the issues which were considered at the trial were :—

(1) Was Aminah binti Haji Mohamed one of the beneficiaries of the estate a minor at the date of the agreement for sale; and
(2) Was the transaction which took place a sale or a lease?

The learned trial Judge found as a fact that there was an agreement for sale and not a lease. He also found that Aminah binte Haji Mohamed was at the date of the agreement of age. None of the other issues raised in the pleadings were considered. The appellant has relied on two grounds of appeal :—

"1. That there was no agreement to sell the land but instead an agreement to seek the permission of the Court to sell the land after such permission had been granted.
2. The learned judge was wrong in holding that he was able in law *to jump* or avoid the condition precedent of seeking an order of the Court for leave to sell *before* making an order to sell the land itself."

As regards ground No. 1, it is perfectly clear that it was an agreement for sale, and what transpired cannot be regarded as amounting only to an agreement to obtain the permission of the Court to sell. The appellant has relied on the decision in the case of *Gan Hong Hoe v. Aziz Beg*[1], and contends that at the highest the respondents are entitled to damages for breach of contract.

Section 45 of the Kedah Administration of Estates Enactment (No. 1) provides :—

"An administrator has power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 40, provided that he shall not charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him without first obtaining the permission of the Court by which the letters of administration were granted."

The appellant has contended that the agreement for sale, if there was one, was void by reason of the provisions of this section. It should be said rather that the agreement is un-enforceable unless the permission of the Court is obtained. In my view, the case of *Gan Hong Hoe v. Aziz Beg*[1], *supra,* is clearly distinguishable from the present case on the facts. In that case the learned trial Judge found that the agreement entered into by the administrator of the estate in question :—

"was not an agreement to sell in the first place but merely an agreement to obtain the permission of the Court to sell, and only to sell after such permission had been granted."

I am not concerned with the correctness of such finding and would only say that in the present case there was a clear agreement for sale.

If the appellant's contention is correct, the only person who can apply for permission to transfer the land belonging to the deceased's estate is the administrator. In my view, this cannot be correct, for an administrator would be able to avoid any agreement he entered into merely by refusing to seek the permission of Court, and the persons with whom he entered into agreements would be powerless to approach the Court and seek permission for the transfer to be permitted. The object of this provision is to protect estates and no more.

Although this point was not argued in the Court below, the learned trial Judge must have been aware of section 45, as it is mentioned in the statement of defence. In my view, his making the order for specific performance of the agreement for sale impliedly gave permission under section 45. Perhaps it would have been better if in the formal order permission to transfer (under section 45) had been included. Had this matter been considered at the trial, there can be no question but that the Court would have given permission. The purchase price was distributed amongst the beneficiaries, with the exception of one who renounced her share in the purchase price, and there was no suggestion that the price paid was anything but fair. Agreements for sale of land can be entered into by administrators, but the transfer of the land in question and the registering of the purchaser cannot be effected until the permission of the Court has first been obtained.

This Court is bound by the decision in the case of *Salmiah binti Haji Taib v. Lim Soo Kok*[2] in which the Court of Appeal agreed with the views expressed by Briggs J. in the case of *Haji Osman bin Abu Bakar v. Sayid Noor bin Sayid Mohamed*[3] that the High Court is empowered, in cases of this kind, to give the permission required under section 45, and if such permission is not given, the Court of Appeal is empowered to do so.

I would dismiss this appeal with costs and order the deposit to be paid to the respondents' solicitors on the usual undertaking.

Appeal dismissed.

Solicitors : *H. E. P. Powell & Co.; Lee Thean-Chu.*

FOO CHIEW FONG v. GURIMAN

[C. A. (Mathew C.J. (F.M.), Whyatt C.J. (S) and Pretheroe J.) November 8, 1956]

[Ipoh — F.M. Civil Appeal No. 18 of 1956]

Subordinate Courts Rules, 1950. O. x. r. 7 — Discretion to direct that party in default be precluded from defending claim — Exercise of discretion — Whether Court of Appeal can interfere with the exercise of discretion.

In this case the learned Magistrate in exercise of his discretion under Order X rule 7 of the Subordinate Courts Rules precluded the defendant from defending the action on the ground that he had not filed his defence within the time limited. The defendant appealed.